



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: **D-11601, 2011-21, BB&T Asset Management, Inc.; and D-11608, 2011-22, Russell Trust Company.**

SUPPLEMENTARY INFORMATION: A notice was published in the Federal Register of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might

submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

BB&T Asset Management, Inc. (BB&T AM)
Located in Winston-Salem, North Carolina
[Prohibited Transaction Exemption **2011-21**;
Exemption Application No. **D-11601**]

EXEMPTION

SECTION I: COVERED TRANSACTIONS

The sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1)(A) and (C)-(F), shall not apply, effective April 30, 2002 until December 27, 2005, to (1) directed trades by BB&T AM and its successors in interest (together, the Applicant) as an investment manager and investment adviser to certain plans, subject to Code section 4975, but not subject to Title I of ERISA (the IRAs), which resulted in the IRAs purchasing or selling securities from Scott & Stringfellow, LLC (S&S), an affiliated broker-dealer of BB&T AM (collectively, the Transactions); and (2) compensation paid by the IRAs to S&S in connection with the Transactions (the Transaction Compensation).

This exemption is subject to the conditions set forth below in Sections II and III.

SECTION II: SPECIFIC CONDITIONS

(a) The Transactions and the Transaction Compensation were corrected (1) pursuant to the requirements set forth in the Department's Voluntary Fiduciary Correction Program (the VFC Program)¹ and (2) in a manner consistent with those transactions described in the Applicant's VFC Program application, dated January 22, 2010 (the VFC Program Application), that were substantially similar to the Transactions but that involved plans described in Code section 4975(e)(1) and subject to Title I of ERISA (the Qualified Plan Transactions).

(b) The Applicant received a "no-action letter" from the Department in connection with the Qualified Plan Transactions described in the VFC Program Application.

(c) The fair market value of the securities involved in the Transactions was determined in accordance with Section 5 of the VFC Program.

(d) The terms of the Transactions and the Transaction Compensation were at least as favorable to the IRAs as the terms generally available in arm's length transactions between unrelated parties.

(e) The Transactions and Transaction Compensation were not part of an agreement, arrangement or understanding designed to

benefit a disqualified person, as defined in Code section 4975(e)(2).

(f) The Applicant did not take advantage of the relief provided by the VFC Program and Prohibited Transaction Exemption 2002-51² (PTE 2002-51) for three (3) years prior to the date of the Applicant's submission of the VFC Program Application.

SECTION III: GENERAL CONDITIONS

(a) The Applicant maintains, or causes to be maintained, for a period of six (6) years from the date of any Transaction such records as are necessary to enable the persons described in Section III(b)(1), to determine whether the conditions of this exemption have been met, except that:

(1) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of Applicant, the records are lost or destroyed prior to the end of the six-year period; and

(2) No disqualified person with respect to an IRA, other than Applicant, shall be subject to excise taxes imposed by Code section 4975, if such records are not maintained, or are not

¹ 71 FR 20262 (April 19, 2006).

² 71 FR 20135 (April 19, 2006).

available for examination, as required by Section III(b)(1).

(b) (1) Except as provided in Section III(b)(2), the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any IRA that engaged in a Transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any owner or beneficiary of an IRA that engaged in a Transaction or a representative of such owner or beneficiary.

(2) None of the persons described in Sections III(b)(1)(B) and (C) shall be authorized to examine trade secrets of Applicant, or commercial or financial information which is privileged or confidential.

(3) Should Applicant refuse to disclose information on the basis that such information is exempt from disclosure, Applicant shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may

request such information.

EFFECTIVE DATE: This exemption is effective from April 30, 2002 until December 27, 2005.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 11, 2011 at 76 FR 49791.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shiker of the Department, telephone (202) 693-8552. (This is not a toll-free number.)

Russell Trust Company (RTC or the Applicant),
Located in Seattle, Washington.

[Prohibited Transaction Exemption **2011-22**;
Exemption Application No. **D-11608**]

EXEMPTION

SECTION I - COVERED TRANSACTIONS

(a) The restrictions of sections 406(a)(1)(A), (a)(1)(B), (a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (c)(1)(B), (c)(1)(D), and (c)(1)(E) of the Code, shall not apply, between September 14, 2009 and September 14, 2010, inclusive, to an arrangement involving the following transactions:

(1) The extension of credit, through a revised capital support agreement, to certain employee benefit plans (the Plans) invested, directly or indirectly, in the Russell Securities Lending Short-Term Investment Fund (the SecLending Fund) by the Frank Russell Company (FRC), the parent company of RTC and a party in interest with respect to the Plans, in connection with

the SecLending Fund's holding of certain notes (the Notes) issued by Lehman Brothers Holdings Inc. or its affiliates (the Revised SecLending Fund CSA);

(2) The extension of credit, through a revised capital support agreement, to certain Plans invested, directly or indirectly, in the RTC Russell Liquidity Fund (the Liquidity Fund) by FRC in connection with the Liquidity Fund's holding of the Notes (the Revised Liquidity Fund CSA);

(3) The provision of a revised guarantee to FRC by its parent company, the Northwest Mutual Life Insurance Company (NML), a party in interest with respect to the Plans, in order to ensure FRC's foregoing capital support obligation to the SecLending Fund (the Revised SecLending Fund Guarantee);

(4) The provision of a revised guarantee to FRC by NML in order to ensure FRC's foregoing capital support obligation to the Liquidity Fund (the Revised Liquidity Fund Guarantee);

(5) The accrual and periodic payment of certain supplemental yield contributions by FRC to the SecLending Fund (the SecLending Fund Supplemental Yield Contributions); and

(6) The accrual and periodic payment of certain supplemental yield contributions by FRC to the Liquidity Fund (the Liquidity Fund Supplemental Yield Contributions);

(b) The restrictions of sections 406(a)(1)(A), (a)(1)(B), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (c)(1)(B), and (c)(1)(E) of the Code shall not apply to the September 10, 2010 cash sale (the Sale) of all of the Notes held by both the SecLending Fund and the Liquidity Fund (taken together, the Funds) to FRC, which transaction was settled on September 14, 2010 upon receipt by the Funds of the cash proceeds of the Sale; provided that all of the conditions set forth below in Section II are satisfied.

SECTION II - CONDITIONS

(a) With respect to the arrangement involving (i) the Revised SecLending Fund CSA and the Revised Liquidity Fund CSA transactions (together, the Revised CSAs), (ii) the Revised SecLending Fund Guarantee and the Revised Liquidity Fund Guarantee transactions (together, the Revised Guarantees), and (iii) the SecLending Fund Supplemental Yield Contributions and

the Liquidity Fund Supplemental Yield Contribution transactions (together, the Supplemental Yield Contributions):

(1) The decision to enter into each of these transactions was made on behalf of the Funds (and the employee benefit plans invested, directly or indirectly, in the Funds) by an independent fiduciary (the Independent Fiduciary), who reviewed their terms and conditions of each of the foregoing transactions and determined that they were protective of, and in the interest of, the Funds and the Plans investing therein;

(2) The foregoing transactions were entered into pursuant to written agreements that contained all of the relevant terms and conditions relating to such transactions; and

(3) The Funds did not pay any fees, commissions or other expenses in connection with the foregoing transactions;

(b) With respect to the Sale of the Notes by each Fund to FRC:

(1) The Sale was a one-time transaction for cash;

(2) In connection with the Sale, the applicable Fund received an amount which was equal to the greater of: (i) the market value of the Notes being sold on the date of the Sale; or (ii) the sum of the amortized cost of such Notes, plus any

accrued but unpaid interest on such Notes through the earlier of the maturity date of the applicable Note or September 14, 2009, in each case calculated at the contract rate;

(3) The Funds did not pay any fees, commissions or other expenses in connection with the Sale;

(4) The decision to sell all of the Notes held by the Funds to FRC was made by an Independent Fiduciary, who determined that the Sale of the Notes was appropriate for, and in the best interests of, each of the Funds and the Plans invested, directly or indirectly, in the Funds, at the time of the Sale transaction;

(5) The Independent Fiduciary has taken all appropriate actions necessary to safeguard the interests of the Funds, and of the employee benefit plans invested, directly or indirectly, in the Funds, in connection with the transaction;

(6) If the exercise of any of FRC's rights, claims, or causes of action in connection with its ownership of the Notes results in recovering from the issuer of the Notes, or any third party, an aggregate amount that is in excess of the sum of: (i) the Sale price paid for the Notes by FRC; and (ii) interest on such Sale price paid for the Notes from and after September 10, 2010, determined at the face interest rate for the applicable Note, then FRC will refund such excess amount promptly to the

Funds (after deducting all reasonable expenses incurred in connection with the recovery);

(c) RTC and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (d)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a plan which engages in the covered transaction, other than FRC, RTC and their affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (d)(1);

(2) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of FRC, RTC or their affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(d)(1) Except as provided, below, in paragraph (d)(2), and notwithstanding any provisions of subsections (a)(2) and (b)

of section 504 of the Act, the records referred to, above, in paragraph (c) are unconditionally available at their customary location for examination during normal business hours by -

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of any plan that engages in the covered transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraph (d) (1) (B) - (D) shall be authorized to examine trade secrets of FRC, RTC or their affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should RTC refuse to disclose information on the basis that such information is exempt from disclosure, RTC shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

WRITTEN COMMENTS

1. The Notice of Proposed Exemption (the Notice), published in the June 13, 2011 issue of the FEDERAL REGISTER beginning at page 34261, invited all interested persons to submit written comments and requests for a hearing to the Department within forty-five (45) days of the date of its publication. In response, the Department received a written comment from the Applicant on July 21, 2011 (which was supplemented by an additional clarifying letter from the Applicant on July 26, 2011) regarding the content of the Notice. This comment, which was the only one received by the Department in connection with the Notice, suggested certain clarifications and editorial adjustments to the operative language contained in Section I ("Covered Transactions") and Section II ("Conditions") of the Notice, which are described in detail below; those modifications suggested by the Applicant which the Department has determined to adopt are reflected in the text of this final grant (the Grant)

of exemption. The Applicant's comment also requested certain adjustments to the text of the "Summary of Facts and Representations" section of the Notice, which are described and incorporated below. The Department notes that it did not receive any requests for a hearing from the Applicant or from any other person during the aforementioned 45-day comment period.

2. In its written comment, the Applicant expressed its view that the applicable period for exemptive relief described in Section I(a) of the Notice (the text of which begins at the first column of page 34261 of the June 13, 2011 issue of the FEDERAL REGISTER) should be modified in the Grant to encompass the period from September 10, 2009 through September 14, 2010. In requesting this adjustment, the Applicant noted that while FRC's and NML's primary obligations under the Revised SecLending Fund CSA, the Revised Liquidity Fund CSA, the Revised SecLending Fund Guarantee, and the Revised Liquidity Fund Guarantee may have technically terminated upon the closing of the Sale on September 10, 2010, the Supplemental Yield Contributions continued to accrue (and the proceeds of the Sale were not received by the Funds) until September 14, 2010. Therefore, the Applicant stated, all of the transactions covered by the exemption were not completed until September 14, 2010.

In support of this view, the Applicant's comment noted that

Sections I(a)(5) and (6) of the Notice, which proposes exemptive relief for the "accrual and periodic payment" of the Supplemental Yield Contributions, would not in fact exempt the final payment of such contributions on September 14, 2010, nor the accrual of such contributions from September 10 through September 14, 2010. Moreover, the Applicant states, because the Supplemental Yield Contributions were made a part of the Revised CSAs, it could be concluded that the transactions described in Sections I(a)(1) through I(a)(4) of the Notice also were not completed until September 14, 2010. After due consideration, the Department concurs with the Applicant's suggested modification, and has determined to amend the text of lines 9 and 10 of Section I(a) in the Grant by deleting "September 10, 2010" and inserting in lieu thereof "September 14, 2010".

In this connection, the Applicant's comment also suggested an adjustment to the language of Section I(b) of the Notice (which begins at the second column of page 34261 of the same issue of the FEDERAL REGISTER) to reflect that the Sale, which was executed on September 10, 2010, ultimately settled on September 14, 2010 with receipt of the full Sale proceeds by the Funds on that date. The Department also concurs with this suggested modification, and amends the text of Section I(b) in the Grant by inserting a comma after "FRC" at line 11, and

inserting of the words "which transaction was settled on September 14, 2010 upon receipt by the Funds of the cash proceeds of the Sale" prior to the concluding semicolon.

3. In its comment letter, the Applicant noted that Section I(b) of the Notice proposes to exempt the Sale transaction from "[t]he restrictions of section 406(a)(1)(A), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (E) of the Code." With respect to this provision, the Applicant requested that the scope of exemptive relief for the Sale transaction be expanded to encompass relief from the restrictions of section 406(a), generally. The Applicant commented that the Sale could be viewed as a "transfer to . . . a party in interest, of any assets of the plan," within the meaning of section 406(a)(1)(D) of the Act.³ The Applicant further commented that it is possible that aspects of the Sale could be deemed to constitute the "lending of money or other extension of credit between the plan and a party in interest," within the meaning of section 406(a)(1)(B) of the Act, especially if the Sale is viewed in conjunction with the other transactions described in Section

³ References made in the Applicant's comment letter to section 406 of the Act shall be deemed to include references to the corresponding provisions of section 4975 of the Code.

I(a) of the Notice. Additionally, the Applicant noted in its comment that, in granting a number of recent individual exemptions covering substantially similar sale transactions and containing substantially similar conditions, the Department has provided relief in many of these exemptions from all of the provisions of section 406(a) of the Act.⁴ Accordingly, in light of these recent exemptions, the Applicant stated that it saw no reason that the Sale should not be covered by the same scope of relief.

In response, the Department has determined, on its own motion, to extend the scope of relief covered by Section I(b) of the exemption to include sections 406(a)(1)(B) of the Act, as well as of sections 4975(c)(1)(B) of the Code. The Department is of the view that expanding the scope of exemptive relief offered in Section I(b) of the Grant to include the foregoing provisions

⁴ Among the numerous individual exemptions cited by the Applicant's comment in support of its request for relief from all of the restrictions of section 406(a) of the Act were: (1) PTE 2011-07 (exempting a one-time cash sale of certain auction-rate securities by a plan to a party in interest from all of the restrictions of section 406(a) of the Act; (2) PTE 2009-27 (exempting a one-time cash sale of certain Lehman-issued securities by a fund to a party in interest of certain plans invested therein from the restrictions of section 406(a)(1)(A) through (D) of the Act); and (3) PTE 2008-12 (exempting a one-time cash sale of certain notes by a fund to a party in interest of certain plans invested therein from the all of the restrictions of section 406(a) of the Act).

of the Act and the Code is appropriate, insofar as Section II(b)(6) of both the Notice and the Grant generally requires FRC, as a condition of relief, to refund any excess proceeds (plus interest) arising as a consequence of any recovery from the issuer of the Notes (or any third party) in connection with the exercise of any of FRC's rights, claims, or causes of action associated with its pre-Sale ownership of the Notes. Such a recovery could result in, or be construed as, an extension of credit between FRC and the Funds. Accordingly, the Department amends the opening words of Section I(b) in the final Grant of exemption to read as follows:

"(b) The restrictions of section 406(a)(1)(A), (a)(1)(B), 406(b)(1), and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (c)(1)(B), and (c)(1)(E) of the Code shall not apply. . ."

4. In its written comment, the Applicant also noted that Section II(b)(6) of the Notice provides that FRC must refund to the Funds any amounts that FRC may recover from the issuer of the Notes or any third party that is in excess of the sum of the Sale price paid by FRC for the Notes plus any interest on such Sale price paid from September 10, 2010 to September 14, 2010, inclusive, made by FRC to the Funds. The Applicant pointed out,

however, that the corresponding conditions for relief found in a number of recent individual exemptions covering substantially similar sale transactions required the refund of any amounts recovered in excess of the applicable purchase price plus interest through the date of recovery.⁵ The Applicant also noted that, in these corresponding conditions, the applicable interest rate credited to the purchase price correlated to an interest rate that was tied to the purchased securities. Therefore, the Applicant opined that the content of Section II(b)(6) of the Grant should not differ in substance from the corresponding conditions for exemptive relief found in recent, similar exemptions. For the foregoing reasons, the Applicant requested in its comment that Section II(b)(6) be amended in the Grant to require the refund to the Funds of any amounts that FRC may receive in excess of (i) the Sale proceeds paid for the Notes by FRC, plus (ii) interest on such Sale price paid for the Notes from and after September 10, 2010, determined at the face interest rate for the applicable Note.⁶ Accordingly, after due

⁵ Among the numerous individual exemptions cited by the Applicant's comment in support of its suggested revision to Section II(b)(6) of the Notice governing the refund of excess proceeds received from the Sale of the Notes were PTE 2011-07 (see Section I(i)); PTE 2009-27 (see Condition (g)); and PTE 2008-12 (see Condition (f)).

⁶ The face interest rates for the various Notes that were the

consideration, the Department concurs with the Applicant's comment, and has determined to amend the text of Section II(b)(6) in the Grant to read as follows:

"(6) If the exercise of any of FRC's rights, claims, or causes of action in connection with its ownership of the Notes results in recovering from the issuer of the Notes, or any third party, an aggregate amount that is in excess of the sum of (i) The Sale price paid for the Notes by FRC; and (ii) interest on such Sale price paid for the Notes from and after September 10, 2010, determined at the face interest rate for the applicable Note , then FRC will refund such excess amount promptly to the Funds (after deducting all reasonable expenses incurred in connection with the recovery);"

5. In its comment, the Applicant also requested that the Department amend and correct certain language contained in the first sentence of the second paragraph of Representation 12 of the "Summary of Facts and Representations" section of the Notice (which is located in the first column of page 34265 of the aforementioned issue of the FEDERAL REGISTER) and in the third

subject of the Sale transaction covered by this exemption are displayed in a chart contained in the Notice, which is located at the conclusion of Representation 15 near the top of page 34266 of the June 13, 2011 issue of the FEDERAL REGISTER.

sentence of Representation 15 of the Notice (located in the third column of page 34265) concerning the formula to be used to compute the price of the Notes in the event of their sale to RTC. Specifically, the Applicant noted in its comment that the Revised CSAs did not contain a new provision stipulating the formula for determining such a sale price; rather, the Independent Fiduciary negotiated this formulaic price for the Notes within a separate term sheet prior to the consummation of the Sale. Accordingly, the Department has corrected the text of the Notice by deleting the words "to include a new provision in each of the Revised CSAs stipulating" that appears after the word "Funds" in the first sentence of the second paragraph of Representation 12; similarly, the text of the Notice is further corrected by deleting the words "Revised CSAs with each of the Funds" that appears in the parenthetical clause of the third sentence of Representation 15 and substituting in lieu thereof the words "term sheet negotiated by the Independent Fiduciary".

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the text of the Notice that begins at 76 FR 34261 (June 13, 2011).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department at (202) 693-8550 (This is not a toll-free number).

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 7th day of November, 2011.

Ivan Strasfeld
Director of Exemption Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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